

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MITSUI SUMITOMO INSURANCE)
COMPANY OF AMERICA,)
Plaintiff,)
v.) 1:09-CV-00480
AUTOMATIC ELEVATOR COMPANY,)
INC. and DUKE UNIVERSITY HEALTH)
SYSTEM, INC.,)
Defendants.)

JUDGMENT

Auld, Magistrate Judge

For the reasons set forth in the Memorandum Opinion and Order filed contemporaneously with this Judgment,

IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiff Mitsui Sumitomo Insurance Company of America's Motion for Summary Judgment (Docket Entry 29) is GRANTED and that (1) Mitsui Sumitomo does not have a duty to defend or to indemnify Automatic Elevator with respect to the Duke Indemnity Action under the 03-04 Policy; (2) the underlying claims of the Duke Indemnity Action involve one "occurrence" as defined under the 04-05 Policy, thereby capping Mitsui Sumitomo's obligations at the \$1 million per occurrence limit of the 04-05 Policy; (3) as Mitsui Sumitomo has previously made \$1 million available for the settlement of underlying claims (see Docket Entry 23, ¶ 25), the available limit under the 04-05 Policy has been exhausted; and (4) Mitsui Sumitomo has no further

duty to defend or to indemnify Automatic Elevator with respect to the Duke Indemnity Action under the 04-05 Policy.

IT IS FURTHER ORDERED AND ADJUDGED that the Motion for Summary Judgment by Duke University Health System, Inc. (Docket Entry 27) is **DENIED**.

/s/ L. Patrick Auld

L. Patrick Auld
United States Magistrate Judge

September 13, 2011